

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop
Additional Methods to Implement the
California Renewables Portfolio Standard
Program.

Rulemaking 06-02-012
(Filed February 16, 2006)

**PRE-WORKSHOP COMMENTS OF THE DIVISION OF RATEPAYER
ADVOCATES ON SB 1036 IMPLEMENTATION**

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I. INTRODUCTION

Pursuant to schedule set by the Energy Division on April 24, 2008 request for pre-workshop comments regarding SB 1036 implementation, the Division of Ratepayer Advocates (DRA) files these comments. DRA anticipates that the administration of above-market funds (AMFs) will be a short-lived process and supports allocating the limited funds in a manner which maximizes the economic benefit to California ratepayers. DRA generally supports Draft Resolution (DR) E-4160 which implements Senate Bill (SB) 1036 (Ch. 685, Stats. 2007) and its treatment for AMF disbursement. Among other things, DRA strongly supports the DR's guidelines which intend to clarify the above-MPR (Market Price Referent) eligibility requirements, define a process by which AMFs are reserved and in-turn released in the event of project failure, and establish higher standards of reasonableness for power purchase agreements (PPAs) eligible for AMFs. Well thought out strategies in each of these areas will provide all parties involved (e.g., the Commission, IOUs, developers) clear ground rules for the administration of AMFs. Though, DRA finds the DR does not properly address the growing loop hole caused by bilateral contracts. DRA looks forward to a clarification of the treatment and reasonableness review of bilateral contracts currently being discussed in R.06-02-012. DRA is concerned that if clear bilateral contract administration guidelines do not quickly follow those proposed in this DR, there may be an unintended

effect that developers will forego the preferred competitive bid process for a less restrictive bilateral process.

As a general comment, DRA suggests that SB 1036 implementation rules should require IOUs to purchase all practical below-market priced PPAs offered before accepting above-market cost contracts which will use AMFs. DRA recommends that the IOUs should not be allowed to quickly deplete their AMF account, thus delaying or ending their RPS obligation, while economic projects are still being offered to them.

DRA appreciates the opportunity to offer these comments and plans to actively participate in this workshop on behalf of the California ratepayers.

A. Ratemaking Issues and AMF Calculator Methodology

The first two general workshop subjects deal with the calculation of the cost limitation for above-MPR costs and the AMF Calculator methodology. In regards to a discount rate being applied to the cost limitation calculation, the AMF Calculator spreadsheet uses a utility-specific Weighted Average Cost of Capital (WACC) for this purpose. At this time, DRA has not considered the full implications of this decision. Both PG&E and SCE have provided substantial and similar comments in this regard which appear to be logical starting points for workshop discussion.

B. Eligibility Criteria for AMFs and Appropriate MPR

The DR specifies AMFs eligibility criteria to promote the goals of the RPS program and to ensure that AMFs are used in a cost-effective manner. DRA agrees with the DR in finding that if a new RPS contract is submitted more than 18 months from the close of the solicitation, then the contract is considered a bilateral contract, and thus not eligible for AMFs. The original intent of the RPS system was to have an annual bidding session, followed by rapid selection of the best bids. In the ideal situation the process would be similar to a company or government body putting out a request for bids on, for example, new automobiles or a new building. The RPS has devolved into a seemingly endless process, with some contracts being signed as long as four years after the original bid was submitted. DRA suggests that if the workshop parties cannot come to agreement

on the ample proposed limit, the Commission initiate a process or further workshops to determine solutions for reducing endless RPS contract negotiations to a reasonable timeframe.

1. Prolonged Negotiations and Contracts Requesting Price Amendment

A workshop topic questions what the appropriate MPR to calculate AMFs request for two different contract circumstances: a contract with prolonged negotiations (e.g. a contract executed more than 18 months after the close of the solicitation) and a contract that has been previously approved, but is requesting a price amendment. At first glance, the distinction between these two kinds of contract is not very clear, but as specified above, DRA recommends that both of these contracts would be considered bilaterals and thus not eligible for AMFs which deems MPR calculation a moot point. Specifically, for a contract that has been previously approved, but is requesting a price amendment, DRA contends the most important single element in contract choice is the price, and the contract selection process has price as the main element in ranking of bids by their benefit/cost ratios. To “amend”, i.e. change, always an increase, the price, makes the contract a bilateral.

2. Contracts with Unrealistic Expected Commercial Online Dates

For a contract with an expected commercial online date that is unrealistic given expected transmission upgrade needs, DRA recommends the MPR in this case should remain the same even if the contracted power plant isn’t finished in time. To change the MPR may change the economics and viability of a project. But this must be combined with rules to hold a contract invalid if the delay is beyond some set time period.

3. All-in-fixed Price vs. Prices Indexed to Natural Gas Prices

The DR goes on to adopt some additional criteria for determining AMF eligibility. At this time, DRA supports the requirement that the contract price is an all-in fixed price for a bundled energy product from a RPS-eligible facility. DRA recognizes that certain

special cases, such as “fleeting opportunities”, might require a modification of this rule. DRA supports the “all-in fixed price” condition, and objects to contracts that have a price indexed to future natural gas prices. One of the major benefits of renewable energy is it protects ratepayer from future fossil fuel price spikes.

DRA also supports the requirement that the facility be physically located in California, as many of the advantages of the RPS program cited in the original legislation assume an in-state location. Also, as stated previously, the AMF fund administration looks to be a short-lived process so the limited funds should be allocated to in-state facilities to provide California ratepayers with the maximum benefits including state environmental, economic, local resource adequacy (RA) requirements, and state jobs.

Likewise, requests for AMFs should not include firming and shaping costs. Firming and shaping may actually impose de facto tradable renewable energy credits (T-RECs) before the Commission has established rules for their use in the RPS.

Lastly, DRA agrees with the DR requirement that a project is not otherwise eligible for other Commission-approved funding programs if they are already funded through other ratepayer initiatives (e.g. Application 07-07-015 pending Commission approval for Emerging Renewable Resource Program (ERRP)).

4. “True-Ups” of Awarded AMFs

Another workshop question for discussion questions how a “true-up”¹ of awarded AMFs will or will not affect the financing for a RPS project. DRA contends natural gas prices will probably continue to rise in the future, and these costs are the main determinants of the MPR. This creates a situation where the MPR will likely increase if a projects COD is delayed until the following year. This would result in lower AMF payments. Conversely, a decrease in natural gas cost could result in higher AMF payments. DRA assumes that most financiers would prefer an assured AMF payment amount, but ask that the Commission detect and prevent “gaming” where a project might

¹ If a project’s actual online date differs from the expected online date in the contract, it would likely require a different
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deliberately miss a deadline, or even finish ahead of a deadline, as a method of changing the AMF payments.

II. Review Standards for Contracts

The workshop Comment Request solicits comments on whether the Commission should review the following types of renewable contracts using the same or varying review standards. Listed below are DRA's comments:

- *Contracts negotiated as part of a competitive solicitation*
Eligible for AMF payments, type of contract anticipated by the RPS law.
- *Bilateral contracts*
Not eligible for AMFs, must have extra scrutiny by Commission for approval.
- *Short-term contracts*
Not eligible for AMFs, additional scrutiny by Commission for approval
- *Long-term contracts*
Eligible for AMF payments, type of contract anticipated by the RPS law.
- *Contracts with prices below the MPR*
Minimum Commission scrutiny required, Advice letter approval
- *Projects smaller than ~20 MW*
If otherwise eligible, similar treatment to larger projects. However, some small projects might be eligible for the new "feed-in" tariffs required by the Commission. This would result in the minimum difficulty for approval.
- *Utility-scale projects (~ greater than 20 MW)*
Ordinary process, this is the type of contract anticipated by the RPS law.
- *New or repowered generation or existing generation*
Although the RPS law was aimed at promoting "new" generation, the continued operation of existing renewable power plants contributes to RPS

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amount of AMFs.

requirements. These contracts should be treated in a similar way, unless the repowered plant has a shorter than 10 years contract period, in which case it is not eligible for AMF funds.

- *Wholesale distributed generation*

This may be a reference to SCE's proposed utility owned rooftop PV generation. DRA thinks that this approach should be considered if it is more cost-effective than other renewable resources. However, this is an issue that might extend into other proceedings.

- *Technologies that have not been commercially demonstrated*

DRA supports the commercialization of new renewable technologies. However, the RPS program is not intended to support pure research and development projects, which are funded through other programs. However, particularly promising technologies that have been successfully demonstrated in smaller or "pilot" projects could be allowed in the RPS, as long as they don't tie up allocation of AMF funds that could be used to support projects using fully commercialized technologies. Perhaps a stringent application of timely "milestone" goals would solve this potential problem.

- *Contracts that are eligible for AMFs*

See previous comments.

- *Contracts ineligible for AMFs*

This response must differentiate between contracts that are ineligible for AMFs because their cost is below the MPR, and thus should get expedited treatment, and contracts that are ineligible for AMFs because of legal aspects, which will probably require special scrutiny.

III. Original Party Proposals

Lastly, the workshop Comment Request solicits parties to present proposals that address the scenarios outlined below:

(a) A wind contract was negotiated as part of 2006 solicitation, but is not executed and filed with Commission until end of 2008. The project's least-cost best-fit (LCBF) ranking was favorable in comparison to other 2006 bids, but the price has increased from the bid price because wind turbine and other project development costs have increased. What MPR (e.g. 2006 or 2008) should the Commission use in calculating AMFs for the project?

This project should be considered a bilateral contract, and thus not eligible for AMFs.

(b) A contract for a project with an above-MPR price was executed in 2008 before any transmission studies were completed. Specifically, the COD in the contract is 12/31/2010, but transmission studies completed after the contract's execution show that major upgrades are needed and it will take an additional 40 months to complete the transmission. The Advice Letter compares the contract to the 2008 MPR with a 2010 online date. What MPR (MPR year and COD) should the Commission use in calculating AMFs for the project?

Retain the original MPR.

(c) A project with a Commission-approved contract has renegotiated its price to reflect higher equipment costs. Should the project be eligible for AMFs? If so, what MPR should the Commission use in calculating AMFs for the project (e.g., original MPR, most recently adopted MPR or does it depend on time lapsed between original and supplemental AL?)?

It should not be eligible for AMFs.

(d.) A utility requests AMFs for two similar (same technology, capacity, and comparable location) solar photovoltaic projects, and there are not enough AMFs remaining for both projects. One project is slightly above the MPR, while the other one is significantly above the MPR. It may be true that market power is being asserted or that a

developer is unrealistically estimating project costs, or that there are project costs that differ between projects. Neither of the first two scenarios is in the ratepayer's best interest: the ratepayer may be overpaying, or a project may not be viable and is tying up AMFs or limited Commission resources may unnecessarily be consumed with processing a price amendment. As a result, how should the Commission determine if one project's costs are more reasonable and realistic than the other? What standards could be applied to determine which contract should be applied toward the utility's cost limitation? Examples of review standards are bid supply curves, cash flow models, and RETI cost curves.²

DRA has not made any determination on this issue at this time, but considers the three sample review standards are a good starting point. DRA looks forward to discussion of these options in the workshop. However, in some cases an independent evaluator requires information from the bidder(s) on equipment and operating costs and then can compute a “cost of service” price for the output. This will indicate how reasonable the contract costs are.

(e.) One utility has two projects pending Commission approval that will each require \$10 million in AMFs. There is, however, only \$10 million in AMFs available. The projects are in various stages of project development with varying capacities and transmission costs. What standards should the Commission use to determine which project should receive AMFs?

The Commission could use the methods mentioned in the immediately preceding case to determine which project has the lower actual costs, and thus the higher likelihood of success. The Commission could also use engineering judgment to determine another major element of the likelihood of success. The benefits of each project should be the total energy delivered to the customer.

While recognizing that this is a “hypothetical” case, DRA should point out that a

² The RETI cost curve methodology is found in the Phase 1A report and the Phase 1B workplan that is attached to the report
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strict application of lowest cost bidding choice should be the project with the more benefits to the customer, even if the difference is miniscule. It is unlikely that two bids would have exactly the same cost.

(f.) A project that received AMFs came online after the online date that was used to calculate the AMFs request. If the AMFs were calculated with the actual online date, additional AMFs would be made available to support another project. How should actual, versus the projected COD, be used to determine the AMFs to be awarded to a project? When should that determination be made?

The MPR in this case should remain the same even if the contracted power plant isn't finished in time. To change the MPR may change the economics and viability of a project. But this must be combined with rules to hold a contract invalid if the delay is beyond some set time period.

(g.) AMFs are awarded to a project, but the project fails to come online by the contractual online date. At what point should the Commission revoke AMFs and reallocate the funds back to the AMF account or to another project? What standards should be used to make a decision to revoke or reduce AMFs?

This will probably be a subject of major debate at the workshop.

IV. CONCLUSION

For all the foregoing reasons DRA recommends that the Commission adopt its comments.

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as Exhibit A. <http://www.energy.ca.gov/2008publications/RETI-1000-2008-002/RETI-1000-2008-002-D.PDF>

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document titled
“PRE-WORKSHOP COMMENTS OF THE DIVISION OF RATEPAYER
ADVOCATES ON SB 1036 IMPLEMENTATION” in R.06-02-012.

A copy has been e-mailed on all known parties of record who have
provided e-mail addresses.

Executed in San Francisco, California, on the 9th day of May, 2008

DAVE PECK